HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.No.5512 of 1998

Dated 16th day of July, 2007

Between:

Geda Muneswar Rao ..
Petitioner

And

The Commissioner of Survey Settlements
And Land Records, A.P., Hyderabad
and three others ..
Respondents

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O R D E R:

This writ petition is filed to quash the order, dated 15.1.1998 in Case No.L2/1080/87 passed by the 1st respondent-Commissioner of Survey, Settlements and Land Records, Hyderabad.

The petitioner asserts that his father was the absolute owner and possessor of an extent of Ac.8.06 cents in R.S.No.28/1 covered by Patta No.33 and Ac.6.75 cents in R.S.No.46/2 covered by Patta No.2B situated in Pragadapalli village, Polavaram Mandal, West Godavari District and after his death, he acquired titled and possession of the property and since then he has been in peaceful possession and enjoyment of them. While so, the 3rd respondent-Settlement Officer, *suo motu* issued a notice to the petitioner to attend an enquiry with regard to his possession of the property. When the petitioner claimed to be the successor of his father's property, the 3rd respondent rejected his claim by an order, dated 31.8.1977. Aggrieved by this order, when the petitioner preferred an appeal, the 2nd respondent-Director of Settlements, dismissed it by an order, dated 6.7.1987. Questioning that order, the petitioner preferred second appeal before the 1st respondent-Commissioner of Survey, Settlements and Land Records. During its pendency, when the Special Deputy Tahsildar (Tribal Welfare) made a complaint against the petitioner under Section 3(2) (a) of A.P. Scheduled Area Land Transfer Regulation 1959 as amended by Regulation 1 1970 (for short "A.P.S.A.L.T. Regulation") seeking eviction of the petitioner on the ground that he is a non-tribal, the Special Deputy Collector, after examining his evidence and records, dismissed the claim by his order dated 30.8.1991 holding that

the lands in question never belonged to tribals and they are in possession of non-triblas from 1916 onwards. Though the petitioner produced a copy of the order dated 30.8.1991, the 1st respondent-Commissioner of Survey, Settlements and Land Records, dismissed the second appeal by the impugned order dated 15.1.1998.

The 1st respondent has filed Counter affidavit *inter alia* denying the affidavit averments and contended that enquiries under the A.P.S.A.L.T. Regulation and under Regulation 2 of 1970 are independent and not dependent on each other. Therefore, the contention of the petitioner that the Special Deputy Collector held that his possession is valid under A.P.S.A.L.T. Regulation is not binding on the authorities exercising power under Regulation 2 of 1970.

Having heard the learned counsel for both the parties, this Court is of the view that the 1st respondent-Commissioner of Survey, Settlements and Land Records instead of deciding the issue and dismissing the appeal, ought to have remanded the matter to the Settlement Officer in view of the subsequent developments. The fact remains that a competent Special Deputy Collector gave a categorical finding that the lands in question never belonged to any tribal and they have been in possession of non-tribals since 1916 onwards. However, the 1st respondent, instead of remanding the matter gave a finding that there is no correlation of R.S.No.28/1 and R.S.No.46/2 with patta Nos. 33 and 2B. Hence, this Court is of the view that it is a matter wherein fresh enquiry is required to be conducted by the Settlement Officer to find out whether the petitioner is entitled for grant of ryothwari patta as contemplated under A.P.S.A.L.T Regulation.

In the result, the writ petition is allowed and the order passed by the 1st respondent dated 15.1.1998 is set aside and the matter is remanded to the 3rd respondent-Settlement Officer. The 3rd respondent is hereby directed to hold a fresh enquiry with regard to the

petitioner's entitlement for ryotwari patta. It is open for the petitioner to produce the entire relevant material including the order dated 30.8.1991 passed by the Special Deputy Collector in S.R.No.619 of 1990 before the 3rd respondent-Settlement Officer so as so enable him to conduct concrete enquiry in the matter. No costs.

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16.07.2007

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